



City of Detroit

***Workers' Compensation Litigation Audit
Findings & Recommendations***

November 2000

Presented by:



***Aon Risk Services
Aon Consulting***



City of Detroit

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and

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1. Executive Summary

Aon's evaluation of the City of Detroit's Workers' Compensation Section within the Law Department has identified many opportunities to improve the overall management of workers' compensation claims, to impact cost savings and to provide a more responsive program for the City's employees who have been injured in the course of their employment. The report describing Aon's findings consists of two parts. One part of the report describes the interviews that were conducted with the attorneys in the Workers' Compensation Section of the Law Department and with members of the Risk Management Department. The second part of the report provides the results of the claims audit during which 204 workers' compensation claims were reviewed in the Law Department.

Each of the sections within the report contains specific recommendations based upon the findings presented and Aon's experience as to acceptable claims practices in the insurance industry. The procedures followed by the City are not consistent with those found in the insurance industry where the workers' compensation adjuster is managing the claim and directing the attorney. In the insurance industry the attorney is generally accountable to the adjuster for the direction of the claim. Overall projections of cost savings cannot be determined due to the fact that individual files in the litigation department do not contain financial data. Potential savings identified in the report are anecdotal.



City of Detroit

During both the interviews and the file reviews there were several issues that were repeatedly identified as warranting action. They are as follows:

- Establish a system of improved communication between Risk Management and the Workers' Compensation Section of the Law Department attorneys.
- Develop performance standards for attorney accountability in loss cost claims management and also in professional development.
- Assign claim ownership and overall responsibility for the file management. In the insurance industry claim ownership is generally assigned to Risk Management or the workers' compensation adjuster.
- Develop written policies and procedures for litigation management of the claims. The policies should require file documentation, a system of supervision, standards for preparation at hearings and guidelines for the use of support services.
- Review the open claims list and outstanding claims of long duration to identify the claims that should be closed. It is recommended that an outside firm be used to review long term claims. Once the number of active open claims is identified, determine the appropriate attorney staffing level.

The recommendations listed above are a summary of the key findings that were identified during the audit and interview processes. More detailed recommendations and specific findings are described throughout the report.

Aon appreciates this opportunity to assist the City in evaluating its current workers' compensation management process.



2. Law Department Interviews

Interview of Chief Corporation Counsel, Senior Attorney and Staff Attorneys.

Interviewers: Cambridge Integrated Services Group

Date of Interviews: November 3, 2000

The Auditor General, a Senior Auditor of the Office of the Auditor General, and a representative of Aon Risk Services were present and participated in the interviews. Prior to interviewing the attorneys, the Auditor General and Senior Auditor from the City and representatives from Cambridge Integrated Services Group met with the Risk Manager and Director of Workers' Compensation for the City of Detroit. Their comments are referenced throughout this report.

2-a. Professional Experience Of Attorneys

The Chief Corporation Counsel is responsible for the Labor Section, which consists of seven attorneys in addition to her, and the Workers' Compensation Section of the Law Department, which includes four attorneys. She had been on the Workers' Compensation Appeals Board prior to her position with the City Law Department.

One attorney has been an attorney since 1983. He first began practicing as an attorney when he joined the Law Department in 1993. At that time he was assigned to the Workers' Compensation Section of the Law Department as the third attorney in the group. Prior to joining the Law Department, he was the General Manager of the Incinerator Plant for the City of Detroit.

The senior attorney joined the Law Department's Workers' Compensation Section in 1989. Prior to joining the Workers' Compensation Section of the Law Department, she was in the Property Division of the City's Law Department.

The other attorney, who has been with the Workers' Compensation Section of the Law Department since 1993, was not interviewed. There is a position open for a fourth attorney in the Section.



2-b. Continuing Education

There is no mandatory requirement for continuing legal education credits in the State of Michigan. The Chief Corporation Counsel stated that she requires all attorneys in the Division to participate in continuing legal education, but she did not state a specific number of courses or credits that the attorneys are required to attain. She had attended three workers' compensation sessions this year and stated that all of the other attorneys with the exception of one had attended a continuing legal education course during the year 2000.

One attorney has attended two workers' compensation seminars at Michigan State University, but did not complete the workers' compensation certification program. As part of his continuing professional education, he has participated in the Bureau of Workers' Compensation task forces with workers' compensation magistrates. He indicated that he receives most of his day to day training from the Senior Attorney in the Division, and also attends Workers' Compensation Bureau seminars.

Another attorney reported a similar source for professional continuing legal education, i.e., free seminars and section meetings at the Workers' Compensation Bureau and the Michigan Self-Insured Conferences.

Recommendations

1. Develop a formal and measurable approach to continuing legal education. As reported, the primary source for continuing legal education training comes from attorneys within the Section itself or non-credit free seminars. Because the Section is not using outside firms, which would provide them with an additional perspective on the law, it is particularly important to mandate continuing legal education. It is also essential that continuing education be emphasized since the staff attorneys have not had significant workers' compensation experience prior to joining the City's Law Department.
2. Require a specified number of continuing education credits for each attorney annually. In states that require continuing legal education in order to maintain a license to practice law, the number of mandated hours averages 10 to 12 hours per year. It is recommended that at least eight hours of continuing education credits in the area of workers' compensation be required and that this be included as part of each attorney's performance evaluation.



2-c. Caseloads

Approximately 1,000 cases are currently assigned to the Workers' Compensation Section of the Law Department. On the surface this is a very high number of cases for four attorneys, but it is not certain how many of those 1,000 cases are considered active and require on-going attention.

One attorney reported that he has 420 cases in his Notebook database, but this includes cases that are redeemed and closed. Of that number he estimates that 250 are active cases with 100 to 150 of those cases being in various stages of litigation. He stated that this year he tried over ten cases, which is more than he has tried in the past three years.

Another attorney was uncertain of the number of open cases assigned to her. She feels it is high and stated that she recently closed a large number of cases.

The Chief Corporation Counsel is requesting an additional attorney for the Workers' Compensation Section of the Law Department, which will bring the total number of attorneys managing workers' compensation claims to five. She does not maintain a workers' compensation caseload.

Recommendations

1. Review all cases in the Law Department that have been open for more than one year to determine whether a number of the cases should be closed or whether they are close to closure. Ideally the review of long term open claims should be conducted by an outside firm. If the caseloads of the attorneys are indeed 250 per attorney, this is an exceptionally high number and an additional attorney or outside counsel should be considered. Attorneys in wage loss states in private practice recommend a caseload that is well under 100 claims.
2. Develop referral and claims management guidelines before referring to outside counsel. If a significant number of cases can not be closed upon review, referring to outside counsel may be a recommendation. While a thorough review of the caseloads may indicate that outside counsel is not required, it is recommended that outside counsel be considered as a resource for training for both the Risk Management and the Law Departments.



2-d. Supervision Of Attorneys

One attorney indicated that the Senior Attorney is responsible for assigning cases and does so on a rotating basis. The basic information is entered into the attorney's Notebook database.

Because of the high caseloads that all attorneys maintain, there is little or no oversight of individual files by a supervising attorney. The Senior Attorney is also responsible for orienting and training new attorneys. New attorneys are assigned claims immediately upon being hired. They are responsible for taking depositions as soon as they join the Section and attend hearings and trials within six months of the date of hire.

The Senior Attorney also reported that her supervisor, the Chief Corporation Counsel, does not supervise her routinely on individual files. The Chief Corporation Counsel is readily available to answer specific questions on files, but does not routinely review the status of files. The reported lack of direct file supervision appears to be primarily due to high workloads that all attorneys are maintaining.

There are no written procedures regarding supervision of individual legal files. The Chief Corporation Counsel reported that she meets weekly with the Workers' Compensation Section of the Law Department to discuss caseloads and trial schedules and on occasion has attended trials to observe the attorneys. She also advised, that she measures her attorneys' performance based upon their communication with her and client satisfaction, with the client being the Risk Management Department.

Recommendations

1. Develop a procedure to assure that cases are assigned to attorneys based upon their existing workload and level of experience. In order to assign new claims on an equitable basis, a review of the open file list is essential.
2. It is also recommended that a system be developed to directly supervise open files. It appears that attorneys are managing claims without peer review, supervisory review or input from the client.
3. Develop a system of attorney accountability that utilizes measurable performance. Examples of performance criteria include attaining continuing education credits, file documentation, communication with Risk Management and opposing counsel, settlement results.
4. Include Risk Management in the supervision of the attorney. Best Practices Claims Management designates the adjuster as the primary manager of the file and as the manager of all activities of defense counsel. The adjuster should maintain daily contact with defense counsel and receive frequent updates on the status of hearings and negotiations. This enables the adjuster to be in a position of objectively evaluating the performance of defense counsel.



2-e. Referrals To Corporation Counsel

Most claim assignments to the Workers' Compensation Section of the Law Department come from the State Bureau of Workers' Compensation. Cases may also come directly to the Law Department from a claimant's attorney who may be interested in settling a claim.

Cases referred from Risk Management are generally for the purpose of negotiating settlements. Initially Risk Management sends a memo requesting assistance in a negotiation. There are no defined procedures regarding what material should accompany the initial memo from Risk Management. The senior attorney indicated that at times the file that is sent by Risk Management does not have complete payment information.

The adjuster initiates the actual negotiation if no attorney is involved. According to one attorney, a request to assist in negotiation is not a request to set up a file and is not a high priority. Often Risk Management does not feel their requests for settlement assistance are given priority status by the Law Department.

Risk management also refers claims to the Workers' Compensation Section of the Law Department with a request to file a petition to cut off benefits. According to one attorney, cut-off requests do receive priority. The attorneys review the information in the file and determine if a request to petition is reasonable.

When the case is assigned to an attorney, a letter under the Chief Corporation Counsel's name is sent to Risk Management. The letter identifies to whom the file is assigned, but Risk Management reported that they generally do not know who the managing attorney is that is assigned to the claim. They also expressed frustration in not having a system that would enable them to pull up a list of claims and identify the attorney assigned to the claim.



Recommendations

1. Develop a procedure for the Law Department to acknowledge referrals to Risk Management when received. According to Risk Management, referrals to the attorneys are not always acknowledged in a timely manner. Form letters could be used for this purpose.
2. Develop a system for identifying and agreeing to priorities when Risk Management sends a claim to the Law Department. Risk Management and the Law Department should meet to develop an understanding and agreement of where the priorities should be placed when referring claims to the Workers' Compensation Section of the Law Department.
3. Develop written guidelines for the adjusters regarding file referrals. Guidelines should include the criteria for referring a file to the Law Department and should describe the documents that the adjusters must provide to the Law Department.
4. Provide the adjusters with written guidelines and training regarding the handling of cut-offs. In some instances prior review with the Law Department would have been beneficial before referring the file.
5. Determine whether a system could be developed where the adjuster can access a list of open litigation files and identify the managing attorney.



2-f. Litigation File Management

Primary Claim Responsibility

When asked the question “Who is primarily responsible for the management of the claim file?” there were conflicting or uncertain responses. When Risk Management refers a file to the Workers’ Compensation Section of the Law Department, it appears the attorneys assume responsibility for major portions of the file but not for all aspects of the file. The attorneys reported that when Risk Management refers a file to them, at that point the attorneys make all arrangements for experts, obtaining documents, scheduling depositions and any other file activity that is needed, but they are not doing so at the direction of the adjusters.

There are areas in which there is not a well-defined assignment of responsibility, such as, fraud identification and identification of subrogation opportunities. Another example is in the calculation of benefits and who is responsible for making that determination. The Senior Attorney reported that she requests that the claims adjusters do the benefit calculations. Risk Management reported that the attorneys send signed but incomplete forms to the adjusters and request that the adjusters calculate the benefits. The attorney signs the form without the amounts entered. It is not clear as to who should be responsible for the calculation of benefits.

One of the reasons for a lack of clear direction regarding claim ownership appears to be caused by the interpretation of the City Charter. The former Chief Corporation Counsel had placed great weight on the City Charter and assumed the Law Department was responsible for the complete management of the file. This apparently was not an accurate interpretation of the City Charter, and there appears to be continuing confusion regarding who has the primary responsibility for the management of workers’ compensation claims. Section 6-403 of the City Charter states: “The corporation counsel shall defend all actions or proceedings against the city.” It further states: “No civil litigation of the city may be settled without the consent of the city counsel (sic).” There is no language that is so specific as to identify the party that should assume overall file responsibility for the claim.

Filing Petitions

Risk Management refers claims to the attorneys for filing petitions. The attorneys stated that they give cut-off petitions priority status. According to two attorneys, at times the Risk Management files are sent to storage and then cannot be retrieved. There have been instances where documents were needed, but the file could not be retrieved. For example, at times a claimant waits for one year to file a petition, and the file may already be in record retention. At that point it may be very difficult or impossible to obtain the file. The attorneys agreed that Risk Management needs to establish an archived file system to retrieve stored files.



Settlements

Risk Management refers claims to the attorneys for assistance in settlement negotiations. The attorneys also respond to inquiries from Risk Management regarding potential settlements. According to one attorney the attorneys do not open a legal file until the claim is ready to settle and then there are no reserves on the files, therefore, they use the “five year rule” for settlements.

The Senior Attorney advised that Risk Management can not settle a case on their own due to a provision in the City Charter. The City Charter does not have a provision excluding Risk Management from the settlement of cases. It does state in Section 6-403 that “No civil litigation of the city may be settled without the consent of the city counsel (sic).” Risk Management and the staff attorneys make recommendations regarding the value of a claim. Generally Risk Management drafts a detailed memo summarizing the claim, recommending a settlement value and provides reasoning for the recommended settlement value. Risk Management indicated that they do not receive updates on the settlement negotiations until the negotiations have been concluded.

The Chief Corporation Counsel has the authority to approve the recommended settlement amount with the authority to release the funds ultimately coming from City Council. The senior attorney advised that to her knowledge the Chief Corporation Counsel has never denied a request for a recommended settlement. The Chief Corporation Counsel reviews the notes in the attorney’s Notebook and the medical documentation.

The information provided regarding who has the responsibility to make recommendations regarding settlements and who has the ultimate responsibility to approve settlements was inconsistent and somewhat confusing.

The Chief Corporation Counsel reported that to her knowledge every case that was settled was an amount that was agreeable to Risk Management and that Risk Management is involved in all settlements. This is not consistent with information provided by the Risk Management Department. The Risk Management Department does not feel they are involved in settlement discussions and expressed concern that cases are often settled at what they believe are too high an amount.

The attorneys reported that the settlement process for Water Department employees needs to be improved. Recommended settlements need to be approved by both the Water Department and City Council to release funds for Water Department settlements and this slows the process.



Hearings

When attending hearings, the workers' compensation attorneys present themselves to the Bureau as the Law Department for the City not as individual attorneys. While there is a positive aspect to presenting the Section as a team, this also minimizes the accountability of individual attorneys.

Frequently the Risk Management Department does not have adequate notice to provide documents for the hearings or to participate in the hearings. The Risk Management Department receives notice on Friday for the hearings that are scheduled the following week. This is not adequate notice particularly for the hearings that occur on Monday.

Mediations

The attorneys represent the City in Workers' Compensation mediations. The Bureau sets the date and time for the mediation and sends a notice to the Law Department. The Law Department then sends a copy of the notice to Risk Management.

All of the attorneys reported that many of the mediations involve minor issues and could be handled by Risk Management. They feel the adjusters could handle many of the mediations, and the attorney should not be attending if the adjuster does. The Chief Corporation Counsel and the staff attorneys reported that they would like to see Risk Management become more involved in attending mediations, but the Law Department has not made a formal request to Risk Management asking that they assume responsibility for mediations.

The Risk Management Department also agreed that they should be receiving notices of the mediations. They reported that they are not able to provide the Law Department with complete information if they are not aware a mediation is scheduled. Risk Management, when interviewed prior to the attorney interviews, had expressed the same opinion regarding mediations. They felt that it was not necessary to send the attorneys to mediations and that they are capable of managing the mediations.

Subrogation

One attorney has not had any situations involving subrogation. Another attorney reported there are very infrequent instances that warrant subrogation. When they do occur, the Workers' Compensation Section of the Law Department sends a lien letter. Risk Management also reported very few instances of subrogation.



Recommendations

1. Identify the Risk Management Department as the party that is primarily responsible for managing all workers' compensation claims. Develop a set of guidelines regarding the roles and responsibilities of attorneys and adjusters when a file is in litigation. In the private sector when an adjuster refers a file to an attorney, the adjuster continues to manage and maintain responsibility for the file and the attorney responds to the adjuster's directions. In Best Practices, the adjuster's file should include copies of all reports and all attorneys' correspondence and activities. Identifying the Risk Management Department as the responsible party for workers' compensation claims does not appear to be in conflict with any provisions of the City Charter.
2. Investigate the feasibility of improving the record retention system. Several comments were made regarding the problem of files that could not be retrieved after being sent to storage by Risk Management.
3. Develop clear guidelines regarding the information and documents that are needed to develop a settlement recommendation. In Best Practices litigation, committees are established to evaluate cases for settlement value and ultimate case exposure. The litigation committee evaluates the odds of prevailing in litigation, identifies cases that should be evaluated for a pre-litigation offer and tracks the results of settlement offers. The committee should operate under clearly defined time frames. The settlement strategy developed jointly by Risk Management and the Workers' Compensation Section of the Law Department should include agreement on the initial offer, the target settlement and the highest value of the settlement range that should not be exceeded, that is, the walk-away number.
4. Obtain additional information regarding the delays that occur in settling cases for Water Department employees, and develop a plan to improve the settlement of Water Department claims.
5. Improve communication to the Risk Management Department regarding hearings. Provide the list of hearings earlier than Friday of the week prior to the hearings.
6. Establish a procedure for involving the adjusters in mediations. Both the Risk Management and the Law Departments favor having adjusters participate in mediation. It appears the change in procedure has not been introduced or implemented because of a lack of communication.
7. Develop a system for identifying potential subrogation opportunities. Develop a checklist for the adjusters to use to assure that subrogation opportunities are not overlooked. Require the attorneys to consider subrogation potential even though it may not be identified by the adjuster. Include subrogation identification or the lack thereof as one of the performance standards of the attorneys.



2-g. Communication With Risk Management

The attorneys communicate with the Risk Management Department through e-mail, telephone, written memos and occasional visits to the Risk Management Department. It has only been during the past year that e-mail was fully available to both the Law Department and Risk Management. Each attorney uses e-mail with varying frequency and for varying reasons. For example, The Senior Attorney reported that she does not use e-mail very frequently. There does not appear to be a standard set as to when or for what purpose e-mail communication should be used. In the Chief Corporation Counsel's opinion e-mail was used often.

The attorneys use a Notebook database to document the status of a claim. The information in the Notebook database is referenced during settlement discussions. During the course of handling the case the attorneys enter notes regarding phone calls, medical information and pre-settlement notes. The attorneys reported that the Notebook entry is sent to Risk Management to establish the value of the case.

The Chief Corporation Counsel stated that Risk Management has requested "more paper" from the Law Department. She is planning to send a memo to the Risk Manager requesting details on what the Risk Management department is expecting in terms of communication from the attorneys. She did not know what they felt was needed in terms of increased documentation.

Risk Management has reported that communication at times is difficult due to a lack of responsiveness on the part of the Law Department. They have reported that phone calls are often not returned and correspondence has been ignored for periods of several months.

The previous Chief Corporation Counsel had suggested using form letters for routine correspondence particularly with Risk Management. According to the attorneys they have not yet developed correspondence form letters.

The Law Department also communicates with Risk Management by providing a calendar of scheduled hearings for the coming week. Risk Management reports that they receive the calendar on Friday and often it is too late for them to discuss a claim with an attorney for hearings that are scheduled for Monday of the coming week.

As an additional means of communication, the Workers' Compensation Section of the Law Department and Risk Management had agreed to meet every three months to discuss files and to improve communication. All attorneys interviewed reported the meetings had decreased in frequency, and the staff attorneys were not certain as to when the next meeting would be scheduled or what the agenda would be. The Chief Corporation Counsel indicated that there had been meetings in June and September, and her goal was to have bi-monthly meetings. She stated they tended to be a session for discussing on-going issues. She also stated this was an opportunity for the Law Department to keep the adjusters informed of changes in the law.





Recommendations

1. Develop guidelines for the use of e-mail between the Law Department and Risk Management. The introduction of e-mail during the past year has improved communication but further improvement could be achieved if all attorneys and adjusters were required to use e-mail consistently. It is further recommended that when there is an e-mail communication, a copy of the document should be printed and placed in the file.
2. Hold interdepartmental meetings on a regular basis, i.e., at least once every two months. Develop agendas prior to the meetings and record and distribute minutes of each of the meetings. The meetings can be a valuable tool towards improving communication and can also be useful in identifying areas where written policies, procedures and training are needed. Maintaining minutes of the meetings will assure that goals are set and met, that there is follow-up and accountability and that participants who miss the meeting will be able to review the topics that were discussed.
3. A result of the inter-departmental meetings should be a written plan that describes the respective responsibilities regarding claim management. Risk Management and the Law Department need to clarify who is responsible for communicating with claimants, supervisors and medical providers.



2-h. Summary Of Recommendations

The recommendations that have been made throughout this part of the report can be summarized into three key areas:

- Communication
- Accountability
- Claim ownership.

There is a need to establish a system of improved communication between Risk Management and the Workers' Compensation Section of the Law Department attorneys. At times Risk Management and the Workers' Compensation Section of the Law Department were in agreement on certain points, but each party was not aware of the agreement. For example, both Risk Management and the attorneys agree that the adjusters should be involved in mediations, but this point has not been communicated.

There is a need to develop performance standards for attorney accountability in the areas of claims loss control management and professional development. There are no written procedures and supervision appears to be of an ad hoc nature. In the insurance industry attorneys are accountable to the adjusters for the length of time the claim remains open and what the outcome of the claim is.

There is a need to assign claim ownership and overall responsibility for file management. In the insurance industry responsibility for the total claim lies with the adjuster while the attorney is responsible for the litigation activities.

Procedures and systems need to be developed to bring the litigation management of workers' compensation claims to a Best Practices standard.



3. Litigation Claims Audit

INTRODUCTION

The City of Detroit retained Aon to review their Workers' Compensation claim handling practices and make recommendations in regard to improvements in their procedures. The first phase of the project, completed in 1999, involved a review of the practices of the Risk Management Department including conducting a claim file review. In order to provide a thorough analysis of the workers' compensation claims procedures; Aon recommended a litigation audit of the Workers' Compensation Section of the City Law Department.

The litigation audit was conducted by Aon Risk Services of Detroit and Cambridge Integrated Services Group, Inc. during the week of November 13, 2000. The litigation audit included an assessment of the overall handling of the litigation files to include, but not be limited to, the following issues:

- Timeliness of referral to the workers' compensation attorneys
- Appropriateness of the referral to the workers' compensation attorneys
- Timeliness of the acknowledgement of the referral by the attorneys
- Appropriate internal documentation by the legal staff
- Appropriate communication/documentation with opposing counsel
- Responsiveness to opposing counsel
- Management of physicians, nurse case managers, and vocational counselors
- Preparation for hearings
- Identification of fraud by the Corporation Counsel
- Appropriate use of surveillance
- Adequate and active pursuit of subrogation possibilities.

The initial phase of the litigation audit included interviews with the City of Detroit's Risk Manager, Director of Workers' Compensation, the Chief Corporation Counsel and two additional staff attorneys. A summary of the interviews is included as a separate section to this report.

In order to objectively measure the performance of the legal staff in the handling of the files, the audit team utilized an audit form addressing the following components:

- Compliance with the critical functions of the claim process
- Timeliness of referral
- Claims investigation
- Evaluation of the claims information
- Management of the litigation process
- Claims resolution



- Potential and actual recoveries
- File supervision
- Overall documentation.

Best Practices claims standards recognize that compliance with these critical components will result in the highest level of service and performance, and assure the optimum efficiency and control in effectively handling and resolving claims in an equitable manner. Although the Law Department does not have a claim procedure manual, the standards measured were established by use of the City of Detroit's stated philosophy and requirements along with generally accepted guidelines in the claim industry.

The "scoring" of the various components should be viewed independently of other components. The subjective comments in response to the "score" are based on professional judgment rather than a "grading". Copies of all audit sheets are available for review upon request.

Based on data provided by the Law Department, there are approximately 1000 open files requiring involvement of the Department. Aon was charged with reviewing approximately 20% of these files. Using the listing provided by the Law Department, the audit team selected approximately 50 files from each of the four attorneys assigned to the section. As part of the selection process, we received input from the Risk Management Department as to specific files that had significant exposure, unique issues, or files wherein they had requested information and claimed to not have received a response. We reviewed 204 files during the audit. Of this number, five were actually closed although they were listed as open.

The following are findings and recommendations based upon Aon's on-site review and audit of workers' compensation files in the City of Detroit's Law Department.



3-a. Documentation From Risk Management

Timely investigation and development of the factual circumstances of each claim submitted is critical to effective claim management. The quality of the investigation determines the ability of the claim handler to verify compensability, evaluate the claim, and develop a reasonable resolution plan. In many cases, litigation is the first notice that a claim is being made. In those instances, Risk Management will not have a file.

While a discussion as to the reason for the low compliance rate is beyond the scope of this exercise, the failure to provide a complete file to the law department does not absolve the department of its responsibility to obtain the needed information. Nothing contained in the files confirmed that the attorneys recognized the insufficiencies in the investigation; or were any efforts noted to obtain the needed investigation. Without the required investigation, it is impossible to formulate a resolution plan and evaluate the case.

Findings

- ▲ In those instances where a claim was previously made and Risk Management did have a file, only 52.1% of those files had sufficient investigation when they were referred to the Law Department.

Recommendations

1. A checklist should be developed which the handling attorney can provide to Risk Management as part of the acknowledgment of receipt of the file. The checklist will outline additional information required by the handling attorney.
2. In those instances where obtaining needed information is outside the scope of the Risk Management Department, the attorney handling the file should make efforts to obtain the required information independently.



3-b. Referrals To The Law Department

Prompt communication between Risk Management and the Law Department is essential to guarantee the proper handling of cases in litigation. Toward that end, guidelines have been established that require Risk Management to refer new litigation to the Law Department within 30 days of receipt of notice regarding a settlement or litigation. The Law Department then must acknowledge to Risk Management receipt of the new assignment within 30 days of the assignment from Risk Management.

Findings

- ▲ Where the referral was from Risk Management to the Law Department, the referral was made within 30 days of notice on 67.5% of the files.
- ▲ The Law Department acknowledged receipt of the files within 30 days in 65% of the cases. In those cases where the acknowledgement was within the 30 days, the average acknowledgement time was 25.8 days.
- ▲ Where the Law Department was served with an application for benefits, they notified Risk Management within 30 days, 81% of the time for an average time to acknowledgment of 18.8 days.

Recommendation

1. While timely acknowledgment of files was not noted to be a significant problem, we would suggest that the Law Department develop an intake log which lists the date of receipt of a file and provides a tickler for acknowledgment. This log could be integrated into the new computerized note system being implemented in the department.



3-c. Claim Management By Law Department

File Review and On-going Analysis

In order to achieve a favorable claim outcome, a proactive approach is essential. The first step in guaranteeing such an approach is for the attorney to complete a review of the file and determine if the necessary investigation has been completed.

When the investigation is concluded, the attorney must then evaluate the claim and develop a written resolution plan that documents the attorney's strategy for bringing the claim to a conclusion in a timely manner. This plan should comment on the scope of any needed additional investigation, analyze the benefits being paid, speak to any potential recovery, and provide a preliminary analysis of the value of the presented claim.

Finally, in order to close the file in a timely manner, a proper diary should be maintained. Not only does maintaining a proper diary assist in ensuring that there are few “surprises,” it also allows for the timely completion of specific tasks necessary to bring a case to a conclusion.

Findings

- ▲ The files reviewed provide no documentation that the handling attorneys completed a written assessment of the file nor is there documentation of a resolution plan.
- ▲ In 9.9% of the files there was minimal evidence that a file analysis had been considered.
- ▲ In only 7.4% of the files was there evidence that the handling attorney was reviewing the file on a regular basis.
- ▲ In 17.1% of the files reviewed there was some documentation of the ongoing activities by the attorney.

The findings in these two categories are indicative of a lack of proactive involvement on the part of the attorneys in the managing and directing of files. It was also evident that files were not reviewed except to react to some impending deadline such as a hearing date. A proactive involvement requires that the attorney should review the file on a regular basis and affirmatively pursue steps to achieve resolution and/or closure.

Overpayments

As a result of the failure to routinely monitor file activities, the audit team found several examples where it appears that overpayments were made.



Findings

- ▲ In file 13128, plaintiff attorney requested settlement in September of 1998. The Law Department has never responded to the plaintiff and in the interim, the claimant continues to receive benefits of approximately \$13,000 a year.
- ▲ In file 12985, the claimant had approached the City in February, 1999 for redemption of his claim. While the file does not reflect a payment rate, it appears that the claimant continues to receive benefits since that time without any further action on the part of the Department.
- ▲ File 11978 reflects that in January of 1995, plaintiff demanded \$150,000 to resolve his case while the Law Department offered \$111,000. There is no evidence of further negotiations. In the interim, approximately \$130,000 in benefits has been paid and these benefits continue. The passage of time has not reduced the redemption value of the case which is still in the range of \$100,000 to \$150,000. The \$130,000 in benefits that have been paid since the request for a settlement is an amount that may have resolved the case in 1995.
- ▲ Another similar situation was file 13126 in which the plaintiff has been receiving benefits of \$25,663 since July of 1998. Plaintiff approached the City for redemption as recently as January, 2000. However, no response from the Law Department has been forthcoming and an additional year of benefits has been paid which does not reduce the redemption value of the case.
- ▲ File 13258 involves ongoing payments of \$24,414 per year to a claimant who approached the Law Department in February of 2000 seeking redemption of his claim. Again, the lack of a response from the Law Department response has resulted in payment of approximately one year of additional benefits.



Diary System

The lack of a proper diary system results in files remaining open when they can be closed. The failure to close files, when appropriate, results in an overstating of case-loads and the inability to properly staff the department.

Findings

- ▲ Of the files reviewed, five had been closed since the list had been generated resulting in 199 total open cases reviewed.
- ▲ Of the files reviewed, at least 71 or 36% of those files should be closed immediately. The recommendation of closure was only for those files in which it was readily apparent that the file could be closed. Examples of open files that should be closed immediately are those that have been resolved and settled, have an on-going payment and no further need for litigation, or where there has been no contact with the claimant or their attorney for several years.
- ▲ A more extensive review of the pending caseload of the Department will undoubtedly result in a higher proportion of the open files being closed.



Loss Cost Management

At present, as responsibility for the handling of the file is transferred to the Law Department upon the initiation of litigation or settlement discussions, responsibility lies with the attorney for proper loss cost management. The currently assigned attorney is responsible for the overall management and administration of the claim and should bear primary responsibility for the effective management of all loss and expense dollars associated with the claim.

Files do not reflect that the attorneys are utilizing the appropriate tools in order to manage all aspects of a potential claim. There is an apparent confusion and lack of agreement regarding the responsibilities of Risk Management and the Law Department in the management of workers' compensation claims. However, as currently structured, the Law Department assumes responsibility for the direction of the claim file upon referral and if this continues to be the case, the attorneys must be charged with the overall responsibility for all components of the loss cost management process.

Findings

- ▲ There is a lack of proactive involvement on the part of the attorneys regarding the specific tasks associated with proper loss cost management.
- ▲ Only 13.8% of the files reflected a proactive involvement by the attorney in attempting to influence the course of medical treatment.
- ▲ Only 9.8% of the files reflected utilization or management of rehabilitation sources.
- ▲ 16.9% of the files reflected that the attorney attempted to confirm/verify medical expenses.
- ▲ Surveillance was only identified and utilized in 14.7% of the cases where, based on the audit team's review, it was felt that its use would be appropriate.
- ▲ Of those files where there appeared to be some form of fraud, the attorneys recognized that the possibility existed in only 7.5% of the cases.
- ▲ Generally, independent medical examinations were appropriately utilized with a compliance rate of 69.7%.



Hearing Preparation

Essential components of litigation management are preparation for hearings and timely attendance at hearings. All of the loss cost claims management components described above are essential for successful preparation for hearings. The overall approach used by the City is to attend hearings in a timely manner but to do little in the way of preparation for hearings and mediations.

Findings

- ▲ The attorneys did adhere to all statutory requirements and met all court-established deadlines with a compliance rate of 97.6%.
- ▲ The attorneys required experts and witnesses in only 64.6% of the hearings.
- ▲ Experts and witnesses at such hearings were prepared only 32.6% of the time.



Recommendations

1. A written case analysis and resolution plan should be completed within 30 days of creation of a file in the department. The resolution plan can, and should, be reviewed and revised, as claim development requires.
2. All file review activities should be documented. E-mail correspondence should be printed and included in the file and all phone calls should be documented.
3. The Law Department must implement an effective diary system. This system will advise attorneys as to when files appear on diary and also provide a listing of files for which the diary dates have passed and a new date has not been assigned. This will aid in developing a proactive approach. The implementation of an effective diary system is an essential tool in guaranteeing that attorneys are prepared. If the diary system is properly used, the file will appear on the attorney's diary in advance of hearings and mediations. This will require the attorney to not only review the file and the resolution plan, but will also provide sufficient time to obtain additional information necessary for the appearance of the attorney before the Board. This will also allow for advance notice to witnesses and experts and allow the attorney sufficient time to prepare the witness for testimony.
4. An effective diary system can also be used for the added function of providing supervisory oversight.
5. Improved coordination between the Law Department and Risk Management should be developed. A written procedure manual outlining the delineation of responsibilities between the two departments should be prepared.
6. The procedure manual should include guidelines regarding the use of medical management, vocational rehabilitation, independent medical examinations and surveillance.
7. Develop written guidelines for hearing preparation. Witnesses should be prepared well in advance of hearings and notice should be given to Risk Management for their input.



3-d. File Documentation And Communication

In order to assure the proper level of supervision and accountability, which will facilitate and enhance the achievement of optimum claim results, there must be the appropriate level of documentation. It is the responsibility of the handling attorney to document the required information. Aside from the use of a written resolution plan, files must be documented as to ongoing legal activities.

This is not only important for the handling attorney to make certain that the resolution plan is followed, but will assist in instances where other attorneys are involved in specific activities, such as appearing before the Board in the event that the attorney assigned has a conflict. There has been turnover in the Workers' Compensation Section of the Law Department and files are frequently reassigned. A well documented file allows the new attorney to review the file and focus his/her activities on needed tasks and provides for a consistency in the City's position as respects a particular matter while eliminating duplication of efforts.

It is the stated objective of both the Law Department and Risk Management that there be sufficient communication between the two departments so that Risk Management is kept apprised of significant activities. Risk Management should be promptly advised as to all settlements and awards to ensure timely payments. In addition to internal communication, it is essential that the handling attorney promptly respond to claimants and/or their attorneys and that they maintain contact with these individuals as appropriate.

Findings

- ▲ In only 17.1% of the files reviewed was there any documentation of ongoing Law Department activities.
- ▲ In only 22.3% of the files reviewed attorneys kept Risk Management advised as to the status of the claim.
- ▲ Attorneys provided additional documentation to Risk Management only 22.7% of the time.
- ▲ Attorneys maintained regular contact with employees or their counsel in only 58.2% of the files.
- ▲ Attorneys responded to opposing counsel only 58.3% of the time.
- ▲ Attorneys advised Risk Management of settlements or awards in 77.3% of the files.



The lack of documentation and communication is again indicative of a reactive, as opposed to a proactive, approach on the part of the attorneys. The lack of an effective diary system means that files are not regularly reviewed and as a result, there is no documentation of ongoing activities in the file. Adopting a proactive philosophy combined with an effective diary system should encourage routine review and documentation

<i>Recommendations</i>
1. Ongoing activities need to be documented in either memorandum form or in the computerized notes system being implemented in the department. Risk Management should receive copies of all pertinent correspondence and documentation.
2. Round table discussions between the attorneys and Risk Management should be held on a regular basis (bi-monthly or weekly), to foster improved communication between the departments.
3. The implementation of an effective diary system will also assist attorneys making certain that they are communicating effectively with claimants and their attorneys on a timely basis.



3-e. Recoveries

The City of Detroit expended over \$17,000,000 in Workers' Compensation payments in 1999. Loss runs delineating payments made on files being handled by the Law Department were not available for the claims review, but with over 1,000 open cases it is assumed that the Department has responsibility for a significant portion of these payments.

To ensure that claims are not being overpaid, there must be consistent and efficient recognition of every claim that involves the possibility of recovery and/or contribution. These possibilities must be recognized, investigated and properly pursued. Sufficient facts should be established during the investigation to successfully identify, prove and pursue recovery and/or contribution. Consideration must also be given to the cost/benefit of the potential recovery/contribution. Subrogation needs to be emphasized and it is anticipated that a further analysis of pending claim activity could result in significant potential recoveries for the city.

The cause of the accident should be carefully investigated and evaluated for the purpose of identifying potential recovery or contribution. Once potential recovery or contribution has been identified, steps should be taken by the attorney to make certain that the evidence of the same is preserved and protected. Lien letters should be prepared and issued to potentially responsible parties as early as possible following the identification of potential recovery or contribution.



Findings

- ▲ Of the files reviewed, 29 files or 15% had evidence of a potential for recovery. Sources of subrogation were identified in 18 of those 29 or 62% of the files that had a potential for recovery. Even in those instances where subrogation or recovery was identified, it was not aggressively pursued.
- ▲ Of the 18 files identified for recovery on the part of the Law Department, subrogation was properly pursued in 12 of the 18 or 66.7% of the files in which they identified subrogation.
- ▲ Of the 29 claims that were identified during the audit as having subrogation potential, the Law Department pursued subrogation in 12 of those 29 or 41%.
- ▲ Generally the single largest source of recovery arises from motor vehicle accidents. There were several instances where the possibility for subrogation warranted further investigation but was not pursued.
- ▲ File 11528 involved a motor vehicle accident where the compensation claim was tried to an open award and the file reflects no investigation or evaluation of possible subrogation.
- ▲ File 12559 involves another motor vehicle accident with over \$150,000 in benefits having been paid and redemption is still pending.
- ▲ File 12674 involves 34 weeks of payments (\$10,737) to an individual whose condition was ultimately determined to be non-work related. A petition was initially filed to recoup those payments; however, the petition was dropped when the claimant moved. There was no further evidence of an attempt to locate the claimant and recoup the payments.

While it is difficult to project possible recoveries given the lack of financial data, insurance industry studies covering all types of employers have reported recoveries of at least 1.3% of all payments. Utilizing last year's total payments, the City should realize a minimum of \$221,000 in recoveries, but based upon the nature of the City's claims and Michigan law, it is anticipated that recoveries for the City would be higher than the insurance industry at large.



<i>Recommendations</i>	
1.	A departmental subrogation log should be established which lists all files in which subrogation has been identified as a possibility, the amount of payments made on the claim, the likelihood of potential recovery, and the final outcome.
2.	Training should be provided to both the Risk Management Department and the Law Department identifying all of the potential events that would warrant subrogation potential.



3-f. Settlements

A lack of prompt and adequate communication with opposing counsel during settlement discussions, with the Risk Management Department and within the Law Department was noted. These findings are all consistent with the audit team's observation that a proactive approach is not taken and that the attorneys do not take action on files unless there is an impending deadline. Cases were routinely settled without the attorney obtaining settlement authority from the appropriate source prior to entering into negotiations.

Findings

- ▲ In only 43 cases was there evidence of the attorney requesting authority from the Chief Corporation Counsel prior to commencing settlement discussions. Rather, it appeared that the standard practice was to negotiate a settlement and present the appropriate documentation to the Chief Corporation Counsel for signature and approval by the city council.
- ▲ The attorney was responsive to opposing counsel only 56.4% of the time during settlement discussions, which is consistent with the overall findings on communications.
- ▲ Attorneys sought the input of the Risk Management Department when evaluating claims for settlement or during the settlement process in only 17.1% of the files. This is consistent with the overall finding that once a file has been taken over by the Law Department, communication between the two departments is minimal.
- ▲ The Chief Corporation Counsel responded to attorneys' requests for settlement authority within 15 days only 44.2% of the time.
- ▲ In only 55.9% of the cases were offsets included when calculating the settlement amounts.
- ▲ Generally, settlement amounts were reasonable and appropriate and settlement of the claim was the appropriate course of action. Generally, we deferred to the handling attorney as to the appropriateness of settlement and the amount of settlement. However, there were instances where cases were overpaid. For instance, claim 13386 involved a 76-year old former employee who approached the City for the settlement of his claim. Risk management's letter to the Law Department recommended a settlement value of up to \$12,000. However, the handling attorney's opening offer was \$12,000, and the case was essentially settled for \$19,500 which consisted of 4 years of benefits. Given the age of the claimant, the settlement amount is considered high.



<i>Recommendations</i>
1. An effective diary system will prompt the attorneys to review the file and respond appropriately to outside parties. As to internal communication, a diary system will allow the attorneys to review the file and note whether settlement authority has been extended by the Chief Corporation Counsel.
2. Files should contain an evaluation and settlement worksheet that will list benefit rates and offsetting benefits (such as some types of Social Security and pension benefits). This will allow the attorney to accurately document their calculation of benefits, potential liability and settlement value.



3-g. Appeals

The file reviews reflected that few cases are actually tried. This finding is not surprising as most cases are resolved either by way of a redemption agreement, payment of a specified period, or an agreement which is reached to resume payments. This is consistent with the industry as a whole since if a case is tried and an adverse award is entered, the decision to pursue an appeal involves many elements, some of which are somewhat intangible in nature. However, it is important that in the event of such an award, the attorney handling the file should conduct an analysis of the decision and provide a written recommendation as to whether an appeal should be taken. An appeal should be pursued in instances where it is believed that there is a good chance of reversal, and in some cases, may be taken so as to posture a case with an open award for settlement.

Findings

- ▲ Of the 20 cases reviewed which were tried to awards, the files evidenced an evaluation as to a possible appeal in 15 or 75% of the cases. Based on experience in the industry, appeals should have been pursued in 6 or 37.5% of the cases.
- ▲ Based on follow-up discussions with the attorneys in the department, it appears that an appeal was considered in all cases, however, this analysis was not documented in the file.

Recommendation

1. Documentation in the file would clarify any questions regarding an attorney's analysis of the need to appeal. The decision to appeal an award ultimately is a judgment call and a written analysis would clarify questions and allow for thorough supervision. Overall, The appeals process in and of itself does not appear to be a problem area.



3-h. Supervision

While we recognize that the nature of the role of the attorneys is to work somewhat independently, this does not alleviate the need for supervisory oversight in the Department. A supervision process is needed throughout the life of the claim file to efficiently move the claim toward an effective resolution. This process allows for the ongoing periodic monitoring of cases that, by virtue of the severity, complexity, or other threshold issue, will warrant review at the supervisory level.

Additionally, this process allows for the periodic review of the claim handler's files to assure compliance with established guidelines, procedures, roles, and obligations. The supervision process should also include a formal and written authority system. The system should establish levels of settlement authority, and those authority levels should be based upon the individual's position, experience, and ability. The supervisor should document the granting of authority and document the file when providing supervisory input.

Findings

- ▲ The attorneys are not complying with the supervisory structure that was described during staff interviews in which supervision is to provide oversight and verify compliance.
- ▲ There was evidence of supervision by a senior attorney in the department in only 5.8% of the cases reviewed. It is suspected that there is a higher degree of supervision exercised in the department on an informal basis, however, this was not documented in the file.

Recommendations

1. A clearly defined supervisory position needs to be established within the Department. This position should be occupied by a senior attorney who has the authority to direct and supervise the attorneys handling workers' compensation matters. Having a person in the role of regularly reviewing files encourages handling attorneys to document their files as to ongoing legal activities and analyses.
2. As part of establishing an overall diary system for the Department, a supervisory diary system should be established with all files being reviewed by the supervising attorney. The supervisory attorney should provide input in writing.
3. The procedure for obtaining settlement authority should be documented and the supervisory attorney should be charged with verifying that the procedure is adhered to regarding procedures and the chain of authority.



3-i. Summary of Recommendations

The findings noted above were well below what would generally be recognized as acceptable within the industry. Further, even those minimal guidelines established by the unit are not being followed or are not being documented. It was not the intention of this review to evaluate the competence of the attorneys within the Workers' Compensation Section of the Law Department but rather to focus on the files. In our informal discussions with some of the staff, it was apparent that they had a satisfactory understanding of the workers' compensation claims process. Nevertheless, they are not following any clearly defined process and, in most cases, there is no documentation to determine their analytical process or what has actually occurred.

In many files there is a total lack of documentation that gives the appearance that the attorneys are going to hearings without preparation and with no plan for resolution. The hearings are often resolved with voluntary assumption of payments without any justification. There is little evidence of settlement authority being sought and when it is, there is a lack of documentation that it has been granted.

There is no apparent diary system by which the attorneys can be reminded of tasks and activities on a given file. This results in a lack of preparation and potentially in the overpayment of claims. It also seems to have resulted in many files being left on the open claims listing when they appear to be ready to be marked closed. This gives the appearance of a greater backlog of claims than really exists. Until all claims that should be closed are indeed closed, it will not be possible to determine whether the Law Department is staffed appropriately.

There is no supervisory comment in the files so it must be assumed that there is no supervision being given. This can result in a lack of compliance with guidelines. There is also no consistent resolution philosophy. Consequently, the appearance is that of a unit comprised of four individual attorneys with varying approaches and philosophies.

In summary the following are primary recommendations needed to achieve improved claims and litigation management:

- Establish written policies and procedures for all the attorneys in the Department.
- Require that the attorneys adhere to the policies and procedures and document the files with their activities and analyses.
- Establish a diary system whereby all claims will receive the attention required on a timely basis.
- Create a formal supervisory role to ensure compliance with claim handling procedures and with the settlement authority guidelines.
- Establish measurable performance standards to assure attorney accountability for the activities and contents of the files.

